

**MINUTES OF THE
STATE WATER DEVELOPMENT COMMISSION**
Wednesday, December 5, 2007 – 1:00 p.m. – Room W135 House Building

Members Present:

Rep. Patrick L. Painter, House Chair
Sen. Dennis E. Stowell, Senate Chair
Sen. Gene Davis
Sen. Scott K. Jenkins
Rep. Ben C. Ferry
Rep. Kerry W. Gibson
Rep. Brad King
Rep. Michael E. Noel
Commissioner Leonard Blackham
Mr. Tage Flint
Mr. Chris Fullmer
Mr. Brad Hancock
Mr. Irvin Haws
Mr. Dallin Jensen
Mr. Warren Peterson

Mr. Rick Sprott
Mr. Michael Styler
Mr. David Ure

Members Absent:

Sen. Mike Dmitrich
Rep. James R. Gowans
Mr. Larry Anhder
Mr. Don Christiansen
Mr. Michael Mower
Mr. Ron Thompson

Staff Present:

Brian Allred, Policy Analyst
Emily R. Brown, Associate General Counsel
Joy L. Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Stowell called the meeting to order at 1:15 p.m. Sen. Dmitrich, Rep. Gowans, and Mr. Thompson were excused from the meeting.

Members of the Commission and staff introduced themselves. Rep. Noel stated he may have a conflict of interest because he is the director of the water conservancy district in Kane County.

MOTION: Mr. Hancock moved that his comments on municipal exemption from water forfeiture in the September 25, 2007 minutes be clarified.

SUBSTITUTE MOTION: Sen. Davis moved to request that the secretary listen to the recording of Mr. Hancock's statement from the last meeting to determine if the language should be corrected. (A copy of Mr. Hancock's comments will be attached to the September 25, 2007 minutes.) The motion passed unanimously. Rep. King was absent for the vote.

MOTION: Mr. Sprott moved, at the request of Sen. Stowell, that the Commission move to agenda item Draft Legislation, "Water Right Forfeiture Protection." The motion passed unanimously.

2. Draft Legislation, "Water Right Forfeiture Protection"

Rep. Painter reviewed 2008 General Session draft legislation, "Water Right Forfeiture Protection." He explained that the bill proposes to change the nonuse period of a water right from five to seven years, clarifies the forfeiture procedure, and protects a water right from forfeiture under certain circumstances.

Sen. Davis declared a conflict of interest because he has irrigation on his property.

Members of the Commission raised the following issues:

- water should be put to beneficial use, not just hoarded
- problems are with the change application process, not with forfeiture
- the importance of protecting a city's ability to grow
- perfecting underground water and putting it to beneficial use
- understanding more about the state's aquifers

Mr. Flint suggested that a moratorium be placed on partial forfeiture for a few years to allow a legislative group to study it as it relates to beneficial use. He stressed the need for separation between underground and surface water rights.

Ms. Brown explained that the Commission would have to determine what specific portions of the statutes it wanted to issue a moratorium on and the legal ramifications of not having to comply with that statute.

Mr. John Sheaffer, Sheaffer Consulting, Inc., distributed "Summary of Proposed Agreement for Dual Water Supply System in Cedar City, Utah Between the City of Cedar City and Sheaffer International, LLC." The proposal would provide Cedar City with a treatment/storage reservoir and slow rate reclaimed irrigation system that would secure the dual use of agricultural water rights for municipal needs.

Mr. Fred Finlinson, Utah Water Coalition, noted that with the exception of the Utah Farm Bureau, the coalition supports the bill.

Mr. Leland Hogan, President, Utah Farm Bureau Federation, stated Utah's water right structure is basic and was established with a great deal of thought. He suggested some type of moratorium be set on what happens over the next number of years and more study be done on the steps to be taken.

Mr. Ken Bousfield, Director, Division of Drinking Water, commented that there are approximately 150 nonpublicly owned community water systems and about 250 publicly owned community water systems, all of which serve a resident population. He said it would be valuable to treat the privately owned community water systems similar to the publicly owned community water systems.

MOTION: Sen. Davis moved to endorse the concept of the legislation to move it forward.

SUBSTITUTE MOTION: Rep. Ferry moved to go to the next item on the agenda. The motion passed unanimously.

3. Safe Yield of a Groundwater Aquifer and Water Right Owner Responsibility

Mr. Allred distributed "Safe Yield Definitions from Selected States," "Utah Legislators' Summary of States' Water Law," and a copy of Utah Code Section 73-1-4. He pointed out that Arizona is the only surrounding state that has a specific statutory definition of safe yield.

Mr. Gary Player, geologist, distributed a copy of a letter to Sen. Stowell regarding safe yield. He discussed sustainable development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Mr. Boyd Clayton, Division of Water Rights, stated that more water is being used in the Beryl/Enterprise area than is sustainably available. He said they are working with local groups to develop a plan to bring the area back to a sustainable level.

Mr. Styler pointed out that the Division of Water Rights has an obligation to follow the statute and reach sustainable or safe yield being careful not to do anything that will upset the economy. He stressed the need for steady, thoughtful change to the way the resource is used.

Mr. Mike Lowe, Utah Geological Survey, distributed information concerning the earth fissures in the Beryl/Enterprise area. He noted that if ground water withdrawals continue to exceed recharge to the Beryl/Enterprise aquifer, subsidence will likely continue and new earth fissures may form.

Mr. LaDel Laub, Escalante Valley Water Users, said the issue for them is the urgency. He noted they have been targeted as the worst basin in the state. Mr. Laub indicated this is a geological formation and should be considered as such. He said they are struggling with the interpretation of the law.

Mr. Dee Hansen, HDC Engineering, LLC, distributed and reviewed "Summary of Current Conditions Depth to Water in Selected Wells & Calculations for Future and Past Use." He discussed the level of water decline in the wells in the area.

Rep. Steve Urquhart commented that the Legislature should clarify the law to prevent the situation in the Beryl/Enterprise area from occurring elsewhere.

4. Paiute Tribe / Indian Peaks Band Water Rights

Ms. Lora Tom, Paiute Indian Tribe of Utah, gave a brief history of the Paiute Tribe in Utah, whose membership is 850. They support recognition of the Indian Peaks Band reserved water rights.

Ms. Jeanine Borchardt, Chair, Band (Indian Peaks Band), said they are asking the state to recognize their water rights because they do not have any economic development on their land.

Mr. Jeff Zander, attorney representing the Paiute Indian Tribe of Utah, distributed and reviewed "Background Information Federal Reserved Water Rights of the Indian Peaks Band of Paiutes." He explained the original land of the Band was in Beaver County but it has since relocated to Iron County. The Band is requesting that its original federal water right be approved for the current location.

Mr. Clayton said that since the reservation lands in question have changed, it is an exceptionally difficult situation. He noted that the Cedar City area was closed to new water appropriations over 20 years ago.

MOTION: Rep. Painter moved to encourage the state engineer, the Division of Water Rights, and the attorney general to enter into discussions with the Indian Peaks Band to try to negotiate a fair settlement to all parties and report back to the Commission. Sen. Stowell and Rep. Noel will be involved in the negotiations. The motion passed unanimously. Sen. Davis, Rep. King, Mr. Blackham, Mr. Jensen, and Mr. Styler were absent for the vote.

5. Water Rights Adjudication Process

Chair Stowell requested that a small information subcommittee be appointed to meet with the Division of Water Rights to gather facts on the water rights adjudication process. He distributed a copy of a newspaper article, *Erda residents at forefront of Utah water rights battle*, to the Commission.

MOTION: Rep. Noel moved to appoint a subcommittee consisting of Sen. Stowell, Rep. Gowans, and Sen. Darin Peterson. The motion passed unanimously. Sen. Davis, Rep. King, Mr. Blackham, Mr. Jensen, and Mr. Styler were absent for the vote.

6. Water Conveyance Improvement Costs

Mr. Thayne Mickelson, UACD, gave a presentation on some of the conveyance systems in the state. He stressed the need to develop a strategy for updating these systems. He noted that multiple use of the systems is an issue and asked that the state take a look at investing in the waterways to help the agriculture producers and municipalities.

Mr. Dennis Strong, Division of Water Resources, indicated the state has a loan program and also partners with the federal government. He believed the state is meeting some of the needs indicated by Mr. Mickelson. He said the issue is one of cooperative effort in getting communities to work with irrigation companies.

Mr. Peterson stated there are good programs in place from the Board of Water Resources for funding canal improvements on a loan basis.

MOTION: Mr. Peterson moved to request that Mr. Strong report to the Commission at its next meeting on methods the state could implement to encourage the cooperative process just described by Mr. Strong.

Due to lack of a quorum, no vote was taken but the commission members present concurred with Mr. Peterson's recommendations.

8. Other Business / Adjourn

Rep. Ferry discussed the proposed Box Elder site selected by Proctor & Gamble for its newest expansion in 35 years. He noted that 4,000,000 gallons of water a day will be moved at the site. He said they are in the process of studying the engineering and cost issues and have identified what flow is available without changing priorities or circumventing any other projects.

Mr. Ure expressed concern that the project not be given preferential treatment over old time residents and business people in Utah.

Mr. Strong explained that Brigham City has made an application to the Board of Water Resources for financial assistance to develop a pipeline to Proctor & Gamble.

MOTION: Mr. Ure moved to adjourn. The motion passed unanimously.

Rep. Painter adjourned the meeting at 4:40 p.m.